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SUBJECT: BULGARIAN CONSTITUTIONAL AMENDMENTS: TOO FAR OR NOT FAR ENOUGH?

1. (SBU) SUMMARY: The Bulgarian parliament is currently considering a package of proposed constitutional amendments aimed at implementing judicial reform and responding to EU criticism of the judicial system. While most observers view the package as essentially well-meaning, concerns have been raised that some of its elements could boost the power of the Ministry of Justice at the expense of the independence of the judiciary. Extensive debate has also circled around proposals to limit parliamentary immunity. The Embassy has sought to encourage constructive dialogue that will bring valid concerns to light in a way that respects the Bulgarian constitutional process. While most of the debate has focused on what amendments will do, little attention has been paid to what they will not do: rein in the vast powers of the Chief Prosecutor and significantly increase judicial accountability. END SUMMARY.

2. (U) On February 3, the National Assembly gave tentative approval to a package of proposed constitutional amendments on judicial reform. Some of these amendments are necessary in order to implement provisions of the October 2005 Criminal Procedure Code, while others represent unrelated efforts to improve the judicial system. Although the amendments must pass through three readings before being formally adopted, virtually all meaningful debate will be concluded by the time of their second reading. Parliament has set a tentative deadline of February 17 for proposed changes to be submitted.

3. (U) The package currently before parliament proposes amendments which would:

- Allow the National Assembly to strip MPs of immunity for any indictable offense. Currently, parliament can only remove immunity if the charge carries a sentence of over 5 years imprisonment.
- Create the office of national Ombudsman.
- Require the Chief Prosecutor and the Chief Justices of the Supreme Administrative Court and Supreme Cassation Court to submit annual reports to parliament.
- Mandate that prosecutors manage and supervise criminal investigations. This change is required in order to implement October 2005 revisions to the Criminal Procedure Code.
- Allow police officers of the Ministry of Interior to conduct criminal investigations. The current Constitution allows only investigating magistrates to carry out investigations. This amendment is also required in order to implement the updated Criminal Procedure Code.
- Enable parliament to recommend dismissal of the Chief Prosecutor and two Chief Justices in the event of grave violation of the law or dereliction of duties. Currently, only the Supreme Judicial Council (on which the Chief Justices and Chief Prosecutor sit) is empowered to make such a recommendation.
- Authorize the Ministry of Justice (MOJ) to assume many of the administrative duties of the Supreme Judicial Council (SJC). Under this amendment, the MOJ would draft the judiciary's budget, manage court property, and handle qualification and certification of members of the judiciary. The MOJ would be allowed to make proposals for the appointment, promotion, demotion, and dismissal of judges, prosecutors, and investigating magistrates. Furthermore, the MOJ would "exercise control" over members of the judiciary with respect to the initiation, trial, and resolution of cases.

4. (SBU) Although offered as a package by the ruling coalition, the proposed amendments do not necessarily reflect a consensus approach to judicial reform. Many leading judicial figures have openly attacked the amendment ceding SJC powers to the MOJ as opening the door to political interference and erosion of the independence of the judiciary.

5. (SBU) Public and media debate on the proposed amendments

has focused almost entirely on proposals to limit parliamentary immunity. The ruling coalition originally proposed these limitations as a signal to the EU of Bulgarian willingness to tackle high-level corruption. The scope of the debate has shifted however, as a rash of high-profile scandals involving MPs has sparked public outrage and political grandstanding. Pundits, politicians and newspaper columnists have responded with proposals to allow MPs only functional immunity, or even to abolish parliamentary immunity altogether. Despite much talk, however, major political parties have yet to formally propose changes to the amendment currently before parliament.

16. (SBU) Given the strong support of all three members of the ruling coalition, the amendments package is expected to pass easily; however, significant alterations are possible before the wording of the amendments is finalized. The Bulgarian People's Union, a center-right opposition party, voted with the coalition in approving the draft package but has proposed changes to the amendments on immunity and removal of judicial leaders. Other opposition parties have criticized the proposed amendments as cosmetic and pointless, urging more radical structural changes and the abolition of all immunities.

17. (U) While the EU has not taken a formal position on the amendments, it has stood behind a report prepared by its resident Spanish/EU PHARE consultant that is critical of proposed increases in the MOJ's authority. The SJC endorsed this report and forwarded it to the National Assembly.

18. (SBU) COMMENT: The current set of amendments is a step in the right direction, but does little to address the Chief Prosecutor's near-total autonomy and the overall lack of judicial accountability. Such much-needed fundamental changes in the division of power would likely require a Grand National Assembly - essentially a constitutional convention - which is more than the political traffic can currently bear. We are also concerned by some of the possible implications of the amendments as currently proposed - particularly those that impact the independence of the judiciary. We have raised these concerns in private meetings with our political and judicial contacts, including the President, Speaker of the National Assembly, and Minister of Justice. USAID, in coordination with Bulgarian partner organizations, has organized two constitutional forums to discuss the amendments, giving high level judicial branch officials, opposition MPs, NGOs, and legal professional associations an opportunity to voice their concerns. END COMMENT.

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